

CRAVATH, SWAINE & MOORE JUN 27 1979 -3 20 PM

ONE CHASE MANHATTAN PLAZA

INTERSTATE COMMERCE COMMISSION

NEW YORK, N.Y. 10005

212 HANOVER 2-3000

TELEX

RCA 233663

WUD 125547

WUI 620976

9.178.1/30
 No. 9.178.1/30
 Date JUN 27 1979
 Fee \$100.00

ICC Washington, D. C.

COUNSEL

ROSSELL L. GILPATRIC
 ALBERT R. CONNELLY
 FRANK H. DETWEILER
 GEORGE G. TYLER

CARLYLE E. MAW
 L. R. BRESLIN, JR.
 GEORGE B. TURNER
 JOHN H. MORSE
 HAROLD R. MEDINA, JR.
 CHARLES R. LINTON

4, PLACE DE LA CONCORDE
 75008 PARIS, FRANCE
 TELEPHONE: 265-81-54
 TELEX: 290530

33 THROGMORTON STREET
 LONDON, EC2N 2BR, ENGLAND
 TELEPHONE 01-606-1421
 TELEX: 8614901

CABLE ADDRESSES

CRAVATH, N.Y.
 CRAVATH, PARIS
 CRAVATH, LONDON E.C. 2

MAURICE T. MOORE
 BRUCE BROMLEY
 WILLIAM B. MARSHALL
 RALPH L. McAFEE
 ROYALL VICTOR
 ALLEN H. MERRILL
 HENRY W. DE KOSMIAN
 ALLEN F. MAULSBY
 STEWARD R. BROSS, JR.
 HENRY P. RIORDAN
 JOHN R. HUPPER
 SAMUEL C. BUTLER
 WILLIAM J. SCHRENK, JR.
 BENJAMIN F. CRANE
 FRANCIS F. RANDOLPH, JR.
 JOHN F. HUNT
 GEORGE J. GILLESPIE, III
 RICHARD S. SIMMONS
 WAYNE E. CHAPMAN
 THOMAS D. BARR
 ELVIN L. BEDRICK
 GEORGE T. LOWY
 BERT ROSENMAN

JAMES H. DUFFY
 ALAN J. HRUSKA
 JOHN E. YOUNG
 JAMES M. EDWARDS
 DAVID G. ORMSBY
 DAVID L. SCHWARTZ
 RICHARD J. HIEGEL
 FREDERICK A. O. SCHWARZ, JR.
 CHRISTINE BESHAR
 ROBERT S. RIFKIND
 DAVID O. BROWNWOOD
 PAUL M. DODYK
 RICHARD M. ALLEN
 THOMAS R. BROME
 ROBERT D. JOFFE
 ROBERT F. MULLEN
 ALLEN FINKELSON
 RONALD S. ROLFE
 JOSEPH R. SAHID
 PAUL C. SAUNDERS
 MARTIN L. SENZEL
 DOUGLAS D. BROADWATER
 ALAN C. STEPHENSON

June 25, 1979

Funding Systems Railcars, Inc.
Upper Merion and Plymouth Railroad Company
Lease Financing Dated as of May 1, 1979
13% Conditional Sale Indebtedness Due 1980-1992
 [CS&M Ref: 5506-001A]

RECEIVED
 JUN 27 3 12 PM '79
 FEE OPERATION BR.
 I.C.C.

Dear Sirs:

Pursuant to 49 U.S.C. § 11303(a) I enclose herewith on behalf of Funding Systems Railcars, Inc., and Upper Merion and Plymouth Railroad Company for filing and recordation, counterparts of the following:

(1)(a) Conditional Sale Agreement No. 2 dated as of October 26, 1978, between Funding Systems Railcars, Inc., and Shenandoah-Virginia Corporation;

(1)(b) Agreement and Assignment dated as of May 1, 1979, between Aetna Business Credit, Inc. and Shenandoah-Virginia Corporation;

(2)(a) Lease of Railroad Equipment dated as of May 1, 1979, between Funding Systems Railcars, Inc., and Upper Merion and Plymouth Railroad Company; and

(2)(b) Assignment of Lease and Agreement dated as of May 1, 1979, between Funding Systems Railcars, Inc., and Aetna Business Credit, Inc.

Counterparts to -
 - A
 - B
 - C

The addresses of the parties to the aforementioned agreements are:

Lessor-Vendee:

Funding Systems Railcars, Inc.,
1000 RIDC Plaza,
Pittsburgh, Pennsylvania 15238.

Builder-Vendor:

Shenandoah-Virginia Corporation,
8 North Jefferson Street,
Roanoke, Virginia 24042.

Lessee:

Upper Merion and Plymouth Railroad Company,
P. O. Box 404,
Conshohocken, Pennsylvania.

Vendor-Assignee:

Aetna Business Credit, Inc.,
Attention of Intermediate Term Lending-
Commercial Division,
P. O. Box 118,
Hartford, Connecticut 06101.

The equipment covered by the aforementioned agreements consist of 66 100-ton hopper cars, NW Class H-12 bearing the road numbers of the Lessee UMP 6304-6369, inclusive.

Enclosed is our check for \$100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,



George S. Balis
As Agent for Funding Systems
Railcars, Inc., and Upper Merion
and Plymouth Railroad Company

Mr. H. G. Homme, Jr., Secretary,
Interstate Commerce Commission,
Washington, D.C. 20423

Encls.
31N

10541-A

RECORDATION NO. Filed 1425

JUN 27 1979-3 20 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of May 1, 1979

between

SHENANDOAH-VIRGINIA CORPORATION

and

AETNA BUSINESS CREDIT, INC.

AGREEMENT AND ASSIGNMENT dated as of May 1, 1979, between SHENANDOAH-VIRGINIA CORPORATION, a Virginia corporation (hereinafter called the Builder), and AETNA BUSINESS CREDIT, INC. (hereinafter called the Assignee).

The Builder and FUNDING SYSTEMS RAILCARS, INC., a Delaware corporation (hereinafter called the Vendee), have entered into a Conditional Sale Agreement No. 2 dated as of October 26, 1978 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment).

The Vendee and UPPER MERION AND PLYMOUTH RAILROAD COMPANY (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: that in consideration of the sum of One Dollar (\$1) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Vendee and when and as payment is made by the Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof and subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subpara-

graph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by the Builder and, to the extent that any allegation of liability is asserted against Builder which is not excluded from indemnification pursuant to Article 13 thereof, the rights of Builder to said indemnification), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the

Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall arrange to have constructed the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement, the Assignee under this Assignment and the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder.

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof as set forth in the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any

defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to units of the Equipment after settlement shall have been made by the Assignee as provided in Section 4 of this Assignment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon any of such units of the Equipment.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the aggregate Conditional Sale Indebtedness (as defined in said Article 4) with respect to such Equipment, provided that there shall have been delivered

to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel, in such number of counterparts as may be reasonably requested by said special counsel:

(a) assignments or other documents in form satisfactory to Assignee confirming the transfer to the Assignee of the right and interest of the Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement, the Assignee under this Assignment and the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Inspection and Acceptance with respect to the units of the Equipment and the Certificate of the person designated by the Assignee to inspect the Equipment upon completion of construction of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and § 2 of the Lease;

(c) an invoice of the Builder for the units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the bill or bills of sale have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Vendee all right, title and interest of the Builder in the units of the Equipment, free from all claims, liens, security interests and other encumbrances at the time of delivery (other than those created by the Conditional Sale Agreement) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee

pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the satisfaction of all of the conditions contained in Paragraph 6 of the Participation Agreement and the Assignee having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall, without recourse to the Assignee, provide the Builder with a written confirmation of the exclusion from the Conditional Sale Agreement pursuant to Article 3 thereof and from the provisions hereof of the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the Conditional Sale Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns,

make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, subsequent to the payment in full of the Purchase Price of the Equipment, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303; such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. For evidentiary purposes only, any fully executed counterpart shall be sufficient for establishing the terms, covenants and conditions of this Assignment.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly

authorized officials, and their respective seals to be hereunto affixed and duly attested, all as of the date first above written.

SHENANDOAH-VIRGINIA CORPORATION,

by

J. T. Valley

[Corporate Seal]

Attest:

C. H. Fletcher
Assistant Secretary

AETNA BUSINESS CREDIT, INC.,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF *Virginia*)
CITY OF *Roanoke*,) ss.:

On this *27th* day of *June* 1979, before me personally appeared *J. J. Walleray*, to me personally known, who, being by me duly sworn, says that he is President of SHENANDOAH-VIRGINIA CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.


Jeannie B. Stuenkel
Notary Public

[Notarial Seal]

My Commission expires *April 8, 1983*

STATE OF)
) ss.:
COUNTY OF)

On this day of 1979, before me personally appeared , to me personally known, who being by me duly sworn, say that he is Vice President of AETNA BUSINESS CREDIT, INC., that one of the seals affixed to the foregoing instrument is the seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.


[Notarial Seal]

Notary Public

My Commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of May 1, 1979.

FUNDING SYSTEMS RAILCARS, INC.,

by _____

AGREEMENT AND ASSIGNMENT

Dated as of May 1, 1979

between

SHENANDOAH-VIRGINIA CORPORATION

and

AETNA BUSINESS CREDIT, INC.

AGREEMENT AND ASSIGNMENT dated as of May 1, 1979, between SHENANDOAH-VIRGINIA CORPORATION, a Virginia corporation (hereinafter called the Builder), and AETNA BUSINESS CREDIT, INC. (hereinafter called the Assignee).

The Builder and FUNDING SYSTEMS RAILCARS, INC., a Delaware corporation (hereinafter called the Vendee), have entered into a Conditional Sale Agreement No. 2 dated as of October 26, 1978 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment).

The Vendee and UPPER MERION AND PLYMOUTH RAILROAD COMPANY (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: that in consideration of the sum of One Dollar (\$1) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Vendee and when and as payment is made by the Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof and subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subpara-

graph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by the Builder and, to the extent that any allegation of liability is asserted against Builder which is not excluded from indemnification pursuant to Article 13 thereof, the rights of Builder to said indemnification), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the

Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall arrange to have constructed the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement, the Assignee under this Assignment and the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder.

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof as set forth in the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any

defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to units of the Equipment after settlement shall have been made by the Assignee as provided in Section 4 of this Assignment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon any of such units of the Equipment.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the aggregate Conditional Sale Indebtedness (as defined in said Article 4) with respect to such Equipment, provided that there shall have been delivered

to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel, in such number of counterparts as may be reasonably requested by said special counsel:

(a) assignments or other documents in form satisfactory to Assignee confirming the transfer to the Assignee of the right and interest of the Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement, the Assignee under this Assignment and the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Inspection and Acceptance with respect to the units of the Equipment and the Certificate of the person designated by the Assignee to inspect the Equipment upon completion of construction of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and § 2 of the Lease;

(c) an invoice of the Builder for the units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the bill or bills of sale have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Vendee all right, title and interest of the Builder in the units of the Equipment, free from all claims, liens, security interests and other encumbrances at the time of delivery (other than those created by the Conditional Sale Agreement) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee

pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the satisfaction of all of the conditions contained in Paragraph 6 of the Participation Agreement and the Assignee having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall, without recourse to the Assignee, provide the Builder with a written confirmation of the exclusion from the Conditional Sale Agreement pursuant to Article 3 thereof and from the provisions hereof of the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the Conditional Sale Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns,

make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, subsequent to the payment in full of the Purchase Price of the Equipment, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303; such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. For evidentiary purposes only, any fully executed counterpart shall be sufficient for establishing the terms, covenants and conditions of this Assignment.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly

authorized officials, and their respective seals to be hereunto affixed and duly attested, all as of the date first above written.

SHENANDOAH-VIRGINIA CORPORATION,

by _____

[Corporate Seal]

Attest:

Secretary

AETNA BUSINESS CREDIT, INC.,

by

Lawrence D. Hillman
Vice President

[Corporate Seal]

Attest:

J. M. S.
Assistant Secretary

AETNA
BUSINESS
CREDIT
INC.

STATE OF

,)

) ss.:

CITY OF

,)

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is President of SHENANDOAH-VIRGINIA CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF

New York,)

) ss.:

COUNTY OF

New York,)

On this *26th* day of *June* 1979, before me personally appeared *Lawrence D. Stillman*, to me personally known, who being by me duly sworn, say that he is Vice President of AETNA BUSINESS CREDIT, INC., that one of the seals affixed to the foregoing instrument is the seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Ann Dellarocco

ANN DELLAROCO

Notary Public
Notary Public, State of New York
No. 24-5972000
Qualified in Kings County
Commission Expires March 30, 19*80*

[Notarial Seal]

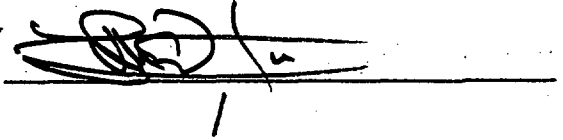
My Commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of May 1, 1979.

FUNDING SYSTEMS RAILCARS, INC.,

by

A handwritten signature, possibly reading "J. D. [unclear]", is written over a horizontal line. A vertical line is drawn below the signature, extending downwards.